

Statement of Mike Dolan
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

The American Institute of Certified Public Accountants thanks the Internal Revenue Service for the opportunity to appear today before the Service's Public Forum on the Tax Return Preparer Review. I am Michael P. Dolan, Chair of the AICPA's IRS Practice and Procedures Committee.

The AICPA is the national professional organization of certified public accountants comprised of approximately 350,000 members. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. They provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses. It is from this broad perspective that we offer our comments today.

I am pleased to testify today on the panel involving representatives of the tax return preparer community, and to present the AICPA's views and recommendations regarding the Service's tax return preparer review. In presenting these views, the IRS should be aware that the Institute is currently refining its positions on the various tax return preparer regulatory issues; we anticipate communicating with the Service over the next several weeks on any updated perspectives we have on this very important topic.

Background

We appreciate that today's public forum is an outgrowth of IRS Commissioner Douglas Shulman's June 4, 2009 testimony before a House Ways and Means Subcommittee on Oversight hearing. At the hearing he stated the Service plans to make recommendations by late December 2009 to ensure that "all preparers are ethical, provide good service and are qualified." We also note and concur with the IRS strategic plan's recognition that tax professionals play a key role in sustaining our "voluntary compliance" based tax system. Commissioner Shulman's announcement complements IRS National Taxpayer Advocate Nina Olson's recommendations to Congress over the past several years that a registration program needs to be created for unlicensed tax return preparers.

The AICPA has been in discussions with IRS and congressional officials on the preparer regulation matter over the last several years and will continue to do so. Clearly, we support the associated goals of increasing compliance and maintaining high ethical standards for all tax practitioners. Indeed, the AICPA strongly supports the maintenance of high professional standards for its own members as we establish and enforce such standards through our Code of Professional Conduct and Statements on Standards for Tax Services.

Addressing EITC and Refund Anticipation Loan Problems

Legislation to regulate preparers has generally been proposed by members of Congress as a partial response to: (1) the high error rate associated with Earned Income Tax Credit (EITC) claims; and (2) consumer protection concerns associated with refund anticipation loans.

We share the concerns regarding the high error rate for EITC claims and with the proliferation of high-interest, short-term refund anticipation loans (RALs). According to the Treasury Inspector General, an IRS study of 1999 tax returns suggests that – out of the \$31 billion in EITC claims by taxpayers that year – between 27 and 32 percent of those claims were erroneous.¹ The report also found that many commercial preparers aggressively encourage the use of RALs by low income taxpayers, often misleading these taxpayers about the true cost of such loans. These concerns have resulted (in part) in the introduction of bills last Congress such as S. 1219 and H.R. 5716, sponsored by Senator Jeff Bingaman and Representative Xavier Becerra respectively.

As part of its tax return preparer review, the AICPA recommends that the IRS also consider solutions to address issues associated with the EITC program and the consumer protection issues surrounding refund anticipation loans. By creating solutions targeted to the specific problems associated with the EITC and RALs programs, we believe such proposals may result in more tangible increases in compliance than a preparer registration proposal alone might yield.

Use of Existing Regulatory Authority and Programs

The AICPA believes the Service already has sufficient authority to regulate federal tax return preparers without the need for an additional legislative grant of authority. First, the IRS has the ability to regulate tax preparers through the penalty process under current law. The Internal Revenue Code permits the Service to assess (among others) penalties for the understatement of a taxpayer's liability (section 6694). We believe the 2007 and 2008 modifications to section 6694, including the marked increase in the dollar amount of the penalty from \$250 to a level of \$1,000 or more – should provide the Service with the ability to have a significant impact on incompetent preparers. Other penalties include those for the failure to furnish a copy or to sign the return (section 6695); the promotion of abusive tax shelters and gross valuation overstatements (section 6700); the aiding and abetting of the understatement of tax liability (section 6701); and actions to enjoin certain conduct by preparers or promoters (section 7407 and 7408).

The government also regulates certain practitioners through the IRS's Office of Professional Responsibility (OPR). OPR enforces Circular 230 which governs the practice by CPAs, attorneys, and enrolled agents (EAs) before the Service. OPR has the authority to identify standards of performance, and discipline these Circular 230 practitioners through disbarment and other sanctions. We recommend that OPR's oversight responsibilities be extended to include unlicensed tax return preparers by providing all preparers (and all other tax practitioners) with one unique identification number for use in all interactions by those professionals with the Service. This would provide an opportunity to eliminate the problematic proliferation of identification numbers (social security, central authorization file or CAF, P-TIN, etc.); and at the same time, make it easier for the IRS to track all the interactions of such professionals with the Service.

Avoiding Unnecessary Duplication in Regulatory Oversight

¹ Testimony of J. Russell George, Treasury Inspector General for Tax Administration, Hearing on IRS's Fiscal 2006 Budget Request; Senate Committee on Appropriations, Subcommittee on Transportation, Treasury, the Judiciary, Housing, and Urban Development, and Related Agencies, April 7, 2005

CPAs, attorneys, and enrolled agents (i.e., tax professionals already subject to Circular 230) should be exempt from any new federal regulation regime imposed on currently unlicensed preparers. The bills introduced in the last Congress properly recognized that these professionals are already subject to regulation and standards imposed upon them by state boards of accountancy, state bars, court systems, and Circular 230. Moreover, these bills effectively acknowledge that CPAs, attorneys, and enrolled agents already pay significant fees to obtain and maintain their professional status. Thus, we strongly advise against any result which would impose duplicative regulatory regimes on CPAs, attorneys, and enrolled agents.

Addressing the Fraudulent Behavior of Some Preparers

There are a significant number of individuals who prepare returns, but who do not have a professional certification (or do not work) under the supervision of professional tax return preparers or tax practitioners as defined in Circular 230. In general, while these individuals participate in return preparation, they cannot be identified through: (a) return signatures since they don't sign the returns; (b) lists of employees of reputable preparers; or (c) professional organizations. As such, it should be noted that none of the current legislative or regulatory proposals "curb" preparers (to any appreciable degree) who are bent on committing fraud. It is only through the dedication of IRS enforcement resources that unscrupulous tax return preparers be removed from our tax system.

Summary:

1. The AICPA supports the goals of increasing compliance and maintaining high ethical standards for all tax practitioners.
2. Solutions to directly address issues associated with the EITC program and the consumer protection issues surrounding refund anticipation loans need to be considered.
3. We believe the IRS already has sufficient authority to regulate federal tax return preparers without the need for new legislation, including through: (a) the current preparer penalty structure; (b) Circular 230; and (c) implementation of one unique identification number for all preparers (and all other tax practitioners) to track all their interactions with the Service.
4. We strongly advise against any result which would impose duplicative regulatory processes on CPAs, attorneys, and enrolled agents; those professionals already subject to Circular 230.
5. It is only through the dedication of IRS's enforcement resources that unscrupulous preparers can be removed from our tax system.